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16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
18 **OAKLAND DIVISION**

19 EPIC GAMES, INC.,

20 *Plaintiff, Counter-defendant,*

21 v.

22 APPLE INC.,

23 *Defendant, Counterclaimant.*

Case No. 4:20-CV-05640-YGR-TSH

**EPIC GAMES, INC.'S
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL EXHIBITS TO ITS
ADMINISTRATIVE MOTION FOR
LEAVE TO FILE SUR-REPLY IN
RESPONSE TO APPLE'S REPLY IN
SUPPORT OF ITS MOTION TO
STRIKE WRITTEN AND ORAL
TESTIMONY OF DR. MICHAEL I.
CRAGG**

The Honorable Yvonne Gonzalez Rogers

1 Plaintiff Epic Games, Inc. (“Epic”) brings this administrative motion under Civil Local
 2 Rules 7-11(a) and 79-5(d)-(e) for an order granting Epic leave to file under seal certain exhibits to
 3 Plaintiff Epic Games, Inc.’s Administrative Motion for Leave to File Sur-Reply in Response to
 4 Apple’s Reply in Support of Its Motion to Strike Written and Oral Testimony of Dr. Michael I.
 5 Cragg (“Administrative Motion for Leave to File Sur-Reply”).

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 7 Civil Local Rule 79-5 provides that documents, or portions thereof, may be sealed if a
 8 party “establishes that the documents, or portions thereof, are privileged, protectable as a trade
 9 secret, or otherwise entitled to protection under the law.” Civ. L. R. 79-5(b). Under this standard,
 10 a party seeking to seal a document generally must overcome the “strong presumption in favor of
 11 access” that applies to court documents other than those that are traditionally kept secret.
 12 *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citations omitted).
 13 However, the “public has less of a need for access to court records attached only to non-
 14 dispositive motions because those documents are often ‘unrelated, or only tangentially related to
 15 the underlying cause of action.’” *Id.* at 1179 (citations omitted). Instead, a “‘good cause’ showing
 16 under Rule 26(c) [of the Federal Rules of Civil Procedure] will suffice to keep sealed records
 17 attached to non-dispositive motions.” *Id.* at 1180; *In re NCAA Student-Athlete Name & Likeness*
 18 *Licensing Litig.*, 2013 WL 3014144, at *1 (N.D. Cal. June 17, 2013). A party seeking to seal such
 19 material must make a “particularized showing of good cause with respect to any individual
 20 document.” *San Jose Mercury News, Inc. v. U.S. Dist. Court, N. Dist. (San Jose)*, 187 F.3d 1096,
 21 1103 (9th Cir. 1999). Sealing requests must also be “narrowly tailor[ed].” Civ. L.R. 79-5(b).

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 23 Subsection (e) of Local Rule 79-5 sets forth procedures that apply when a party seeks to
 24 file information designated as confidential by an opposing party or a non-party. This
 25 Administrative Motion concerns certain exhibits to its Administrative Motion for Leave to File
 26 Sur-Reply containing information that non-party Spotify USA Inc. (“Spotify”) has designated as
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1 “SPOTIFY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY” under the
2 supplemental protective order entered in the above-captioned case. Specifically, Epic moves to
3 seal: (i) the portions of its Sur-Reply that reference PX-1152 (bearing Bates range SPOT-EPIC-
4 00000932-0943) and PX-1153 (bearing Bates range SPOT-EPIC-00001023-1025), which are
5 subject to pending motions to seal by Spotify (*see* ECF Nos. 638 and 649, respectively), as well as
6 the document bearing Bates range SPOT-EPIC-00001047-1066, which is also subject to a pending
7 motion to seal by Spotify (*see* ECF No. 692); (ii) the portions of its Sur-Reply that reference the
8 trial testimony provided by Dr. Cragg during a closed session of Court on May 13, 2021 (Trial Tr.
9 2335:1-2346:15), during which Dr. Cragg referenced the aforementioned documents; and (iii) the
10 document bearing Bates range SPOT-EPIC- 00001047-1066 itself, which is attached as Exhibit A
11 to the Declaration of Yonatan Even in Support of Epic’s Sur-Reply, and which, as noted, is subject
12 to a pending motion to seal by Spotify (*see* ECF No. 692).

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15 Accordingly, Epic is filing certain of its exhibits to its Administrative Motion for Leave to
16 File Sur-Reply under seal. In light of the aforementioned motions to seal by non-party Spotify,
17 Epic respectfully submits that sealing for this narrow purpose is appropriate.
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2 Dated: May 18, 2021

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12 Respectfully submitted,

13 By: /s/ Yonatan Even
14 Yonatan Even

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